

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

Cheetah Omni LLC,

*Plaintiff,*

vs.

Alcatel-Lucent USA Inc., et al.,

*Defendants.*

HONORABLE LEONARD DAVIS

Case No. 6:11CV390

JURY TRIAL DEMANDED

**JOINT CLAIM CONSTRUCTION AND  
PREHEARING STATEMENT**

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Pursuant to Patent Rule 4-3, Plaintiff Cheetah Omni LLC (“Plaintiff”) and Defendants Alcatel-Lucent USA Inc., Ciena Corporation, Ciena Communications, Inc., Fujitsu Network Communications, Inc., Tellabs, Inc., Tellabs Operations, Inc., Nokia Siemens Networks US LLC, and Huawei Technologies USA, Inc. (collectively “Defendants”) submit this Joint Claim Construction and Prehearing Statement.

The seven patents-in-suit are:

- U.S. Patent No. 6,847,479 (“the ’479 patent”)
- U.S. Patent No. 6,856,459 (“the ’459 patent”)
- U.S. Patent No. 6,882,771 (“the ’771 patent”)
- U.S. Patent No. 6,888,661 (“the ’661 patent”)
- U.S. Patent No. 6,940,647 (“the ’647 patent”)
- U.S. Patent No. 7,116,862 (“the ’862 patent”)

- U.S. Patent No. 7,339,714 (“the ’714 patent”)

#### **A. AGREED CLAIM CONSTRUCTIONS [Patent Rule 4-3(a)]**

At this time, the parties have agreed to the construction of the following claim terms/phrases. In addition, they will continue to meet and confer in an attempt to reach agreement on other claim terms or phrases.

Term/Phrase	Agreed Construction
<b>attenuation</b> ('771 patent: claim 15)	reduction in signal power
<b>gain</b> ('771 patent: claim 15)	increase in signal power
<b>at least one of a plurality of communication bands</b> ('771 patent: claim 15)	at least one communication wavelength band out of a plurality of bands, such as the long (“L”), conventional (“C”) or short (“S”) bands or other wavelength bands with wavelengths outside of the L, C or S bands
<b>add/drop multiplexer</b> ('661 patent: claims 2, 7)	a device that adds and/or drops one or more optical wavelengths

#### **B. DISPUTED CLAIM CONSTRUCTIONS [Patent Rule 4-3(b)]**

The parties disagree as to the constructions of the terms listed in Exhibits A and B, attached. Exhibit A contains the constructions proposed by Plaintiff; Exhibit B contains the constructions proposed by Defendants. Where appropriate, the parties have identified, pursuant to Patent Rule 4-3(b), the intrinsic and extrinsic evidence that they contend supports their respective positions. With respect to the intrinsic and extrinsic evidence, all citations to figures are to be construed as including citations to the portions of the specification discussing these figures, and all citations to portions of the specification are to be construed as including citations to any figures that are referenced in these portions of the specification. The parties agree that each party may rely on the intrinsic and extrinsic evidence identified by each other party.

The parties reserve the right to amend, correct or supplement their claim construction positions and supporting evidence in response to any change of position by the other party, or for other good cause to the fullest extent permitted by this Court. For example, Defendants reserve the right to amend or supplement pending receipt of Cheetah's substantive responses to Defendants' Interrogatory No. 11 (including, without limitation, as to the construction of "beam splitter" in reference to the '771 and '862 patents), based on the testimony of Cheetah's or Defendants' claim construction experts (including, without limitation testimony in this case and in *Finisar v. Cheetah*, Civ. No. 2:11-cv-15625 (E.D. Mich.)), or as the course of discovery reveals further evidence.

**C. ANTICIPATED LENGTH OF CLAIM CONSTRUCTION HEARING AND CLAIM CONSTRUCTION PREHEARING CONFERENCE [Patent Rule 4-3(c), (e)]**

By its Scheduling Order, the Court set the claim construction hearing to be held on February 14, 2013. Pursuant to P.R. 4-3(c), the parties request 3 hours per side for the claim construction hearing.

**D. LIVE WITNESSES AT THE CLAIM CONSTRUCTION HEARING [Patent Rule 4-3(d)]**

The parties do not believe that live testimony is necessary at the Claim Construction Hearing. However, if the Court desires live expert testimony, or if any party presents live expert testimony, Cheetah and Defendants may present their experts to testify at the Claim Construction Hearing. Cheetah's and Defendants' experts can provide historical and technological background testimony to assist in understanding the technology at issue, testimony about how the patented invention works, and testimony relating to the interpretation of disputed claim terms.

**E. ANY OTHER ISSUES WHICH MIGHT APPROPRIATELY BE TAKEN UP AT A PREHEARING CONFERENCE [Patent Rule 4-3(e)]**

Pursuant to P.R. 4-3(e), the parties state that they are presently unaware of any additional issues that might require the scheduling of a prehearing conference. Should either party become aware of such issues that it believes necessitates a prehearing conference, it will notify the other party and the Court and propose dates for a prehearing conference.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that counsel of record are being served with a copy of this document via e-mail pursuant to LR CV-5(d) on November 8, 2012.

/s/ Thomas A. Lewry